



Press Summary

22 October 2025

C G Fry & Son Limited (Appellant) v Secretary of State for Housing, Communities and Local Government (formerly known as Secretary of State for Levelling Up, Housing and Communities) and another (Respondents)

[2025] UKSC 35

On appeal from [2024] EWCA Civ 730

Justices: Lord Reed (President), Lord Sales, Lord Hamblen, Lord Stephens and Lady Simler

Background to the Appeal

The appellant is a property developer. In December 2015, Somerset West and Taunton Council (“**the Council**”) granted the appellant outline planning permission for an extensive residential development on land which falls within the catchment area of the River Tone. The River Tone feeds into the Somerset Levels, which comprises part of an area designated as a ‘Ramsar site.’

Ramsar sites are not protected by the Conservation of Habitats and Species Regulations 2017 (“**the Habitats Regulations**”), which implemented the EU’s Habitats Directive in domestic law. However, national planning policy provides for their protection: paragraph 181 of the National Planning Policy Framework (“**NPPF**”) as in place at the relevant time provided that listed or proposed Ramsar sites “*should be given the same protection*” as sites protected under the Habitats Regulations, known as European sites.

The Habitats Regulations continue to have effect post-Brexit as what was called retained EU law and is now called assimilated law. The Habitats Regulations provide for environmental protection of vulnerable sites, including by requiring that an “appropriate assessment” be made in certain cases where there is potential for a development to have a detrimental impact on such sites.

Regulation 63(1) of the Habitats Regulations provides that “*a competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site... (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site’s conservation objectives.*”

It was proposed that the appellant's development would come forward in eight phases. The outline planning permission was subject to 19 conditions.

In June 2020, the appellant was granted reserved matters approval for Phase 3, which comprised 190 dwellings. Ten conditions (referred to in the judgment as sub-conditions) were imposed on the Phase 3 reserved matters approval.

On 17 August 2020, Natural England published new scientific advice in relation to the protection of the Ramsar site. The advice noted that the site was at risk from eutrophication (the accumulation of excessive nutrients in water) as a result of enrichment by phosphates linked to development, and advised that *"before determining a planning application that may give rise to additional phosphates within the catchment [for the Ramsar site], competent authorities should undertake a Habitats Regulations assessment."*

On 9 June 2021, the appellant applied to the Council for discharge of (ie approval under) the sub-conditions imposed on the reserved matters approval for Phase 3. The Council withheld approval, on the basis that an appropriate assessment under the Habitats Regulations was required before the approval could be granted. The Council adopted this position in reliance on the 2020 advice by Natural England and paragraph 181 of the NPPF.

The appellant's appeal against the Council's decision was heard by a planning inspector, who dismissed it. The appellant unsuccessfully challenged the inspector's decision in the High Court. The appellant appealed to the Court of Appeal, which dismissed the appeal. The Court of Appeal held that (1) properly construed, regulation 63 of the Habitats Regulations applied at the stage of consideration of whether conditions attached to reserved matters approval should be discharged, and (2) paragraph 181 of the NPPF was engaged and was a material consideration as regards the Council's decision to discharge the Phase 3 reserved matters approval sub-conditions, so that the Council and the inspector had been right to rely upon it as the basis for deciding to refuse to give approval under the sub-conditions.

The appellant now appeals to the Supreme Court.

The appeal raises two issues. First, the appellant argued that the Habitats Regulations do not require or authorise an "appropriate assessment" to be undertaken before a local planning authority discharges conditions requiring the approval of reserved matters in a grant of outline planning permission for the development (which would mean that paragraph 181 of the NPPF, which cross-refers to the Habitats Regulations, would not require such an assessment for a Ramsar site) (**Issue 1**). Secondly, the appellant argued that since the Habitats Regulations do not apply to Ramsar sites, there is no requirement in law that an "appropriate assessment" be carried out at the stage of consideration of reserved matters approval or the discharge of sub-conditions attached to such an approval (**Issue 2**).

Judgment

The Supreme Court unanimously dismisses the appeal in so far as it is based on Issue 1, and holds that the Court of Appeal was correct in its interpretation of the Habitats Regulations, but unanimously allows the appeal on Issue 2.

Lord Sales gives the judgment with which all members of the Court agree.

Reasons for the Judgment

Issue 1: Does regulation 63 of the Habitats Regulations require an "appropriate assessment" to be undertaken before a local planning authority decides to discharge conditions requiring the approval of reserved matters in a grant of outline planning permission?

Although the appeal is allowed on the basis of Issue 2, the Supreme Court heard full argument on the interpretation of the Habitats Regulations under Issue 1 and considers that it is appropriate to deal with that [43].

The Court holds that the Court of Appeal interpreted regulation 63 correctly [44].

The purpose of the Habitats Regulations is to implement and follow the Habitats Directive, the object of which is to ensure that vulnerable sites are accorded a high degree of protection [47], [50]-[51]. Brexit has not affected that purpose [50]-[51].

In a case involving a potential impact on a site in relation to which the Habitats Regulations have binding legal effect, on the proper interpretation of regulation 63 it would apply to a decision to give reserved matters approval or to give approval under sub-conditions attached to such an approval where that would result in an authorisation for the project to succeed [56]. This interpretation is reached by applying the normal purposive approach to the interpretation of the Habitats Regulations, in accordance with principles of interpretation which form part of domestic law, including by having regard to the precautionary principle in relation to environmental protection [56], [59].

The Habitats Regulations are clear in their effect, and are not ambiguous on this issue, so it is not appropriate to refer to external aids to interpretation [58].

Issue 2: What is the effect of a grant of outline planning permission, and what is the impact on an outline planning permission of a policy adopted by the government and a change of scientific advice bearing on that policy?

The grant of planning permission creates rights under the planning legislation for the developer to develop land in accordance with the permission [60]. This is true of both full planning permission and outline planning permission, with due allowance for the fact that outline planning permission is conditional in various ways [62], [66]. The rights conferred by a grant of planning permission are defined by that grant and cannot be overridden or diluted by government policy [60]-[62]. The judge and the Court of Appeal failed to take into account the nature of these rights [60].

The extent of the conditionality of outline planning permission is determined by a fair and objective reading of the conditions set out in it [66]. The imposition of a condition does not import a general power for the planning authority to refuse to give approval in order to further a purpose or policy objective which is not fairly related to the subject-matter of the condition [66].

Where approval for reserved matters in an outline planning permission is given subject to further conditions (sub-conditions), those sub-conditions have to fall within the ambit of the reserved matters as defined by the conditions set out in the outline permission [66].

Consequently, where outline planning permission reserves matters for the subsequent approval of a local planning authority, the extent to which the authority can withhold its approval is restricted to what has been expressed to be so reserved. The authority is not permitted to go back on points of principle which it has accepted by granting the permission [69].

In this case, the Council and the inspector relied on the policy in paragraph 181 of the NPPF and the new scientific advice given by Natural England in 2020 to revisit matters which had been approved at the outline stage, and did so in a way which could potentially eliminate the possibility of any development taking place within the ambit of the outline permission which had been granted [69]. The conditions set out in the outline permission allowed no reference to the objective of the protection of the Ramsar site [70]. It was therefore not open to the Council or the inspector in this case to refuse to discharge the sub-conditions (ie by giving approval in relation to the matters reserved under them) on the basis that additional measures were required to promote the protection of the Ramsar site [70].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)